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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Charles Baker, III,

10 Petitioner,

11 v.

12 United States of America,

13 Respondent.
14

No. CV-20-00919-PHX-DJH
No. CR-17-00834-PHX-DJH

ORDER

15 Pending before the Court is Movant Charles Baker, III's ("Movant") Motion to
16 Vacate, Set Aside, or Correct Sentence by a person in Federal Custody pursuant to 28
17 U.S.C. § 2255 (Doc. 1) (the "Motion") to which Respondent the United States, filed a
18 Response (Doc. 9). Defendant did not file a reply. United States Magistrate Judge Eileen
19 S. Willett issued a Report and Recommendation ("R&R") (Doc. 10), recommending that
20 Defendant's Motion be denied. (*Id.* at 15). Movant filed a "Response to 2255", which this
21 Court will construe as an Objection to the R&R (Doc. 11). Respondents have not replied.

22 **I. The R&R**

23 In her R&R, Judge Willett, set forth a detailed factual and procedural background
24 of Movant's case. (*See* Doc. 10 at 1-2). The Court repeats that background here for context
25 only. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989) (the relevant provision of the Federal
26 Magistrates Act, 28 U.S.C. § 636(b)(1)(C), "does not on its face require any review at all
27 . . . of any issue that is not the subject of an objection."). As stated in the R&R:

28 On October 2, 2018, Movant signed a plea agreement in which

1 Movant agreed to plead guilty to the crime of Conspiracy to Possess with
 2 Intent to Distribute 500 Grams or More of Methamphetamine, a Controlled
 3 Substance, in violation of 21 U.S.C. §§ 846, 841(a)(1), and
 4 841(b)(1)(A)(viii). (CR Doc. 173). The plea agreement's "Waiver of
 Defenses and Appeal Rights" provision (the "Waiver Provision") states that:

5 The defendant waives (1) any and all motions, defenses,
 6 probable cause determinations, and objections that the
 7 defendant could assert to the indictment or information; and (2)
 8 any right to file an appeal, any collateral attack, and any other
 9 writ or motion that challenges the conviction, an order of
 10 restitution or forfeiture, the entry of judgment against the
 11 defendant, or any aspect of the defendant's sentence, including
 12 the manner in which the sentence is determined, including but
 13 not limited to any appeals under 18 U.S.C. § 3742 (sentencing
 14 appeals) and motions under 28 U.S.C. §§ 2241 and 2255
 15 (habeas petition), and any right to file a motion for
 16 modification of sentence, including under Title 18, United
 17 States Code, Section 3582(c). This waiver shall result in the
 18 dismissal of any appeal, collateral attack, or other motion the
 19 defendant might file challenging the conviction, order of
 20 restitution or forfeiture, or sentence in this case. This waiver
 21 shall not be construed to bar an otherwise-preserved claim of
 22 ineffective assistance of counsel or of "prosecutorial
 23 misconduct" (as that term is defined by Section II.B of Ariz.
 24 Ethics Op. 15-01 (2015)).

25 (*Id.* at 5) (emphasis added).

26 The plea agreement also provides that Movant understood and agreed
 27 to the agreement's terms and conditions, entered into the plea voluntarily,
 28 and that Movant was satisfied with his counsel's representation. (*Id.* at 9-10).

On October 2, 2018, the Court held a change of plea hearing. (CR
 Doc. 103). After the Court completed the plea colloquy pursuant to Rule 11
 of the Federal Rules of Criminal Procedure, Movant pled guilty to
 Conspiracy to Possess with Intent to Distribute 500 Grams or More of
 Methamphetamine. (*Id.* at 27-28). The Court found that Movant knowingly,
 intelligently, and voluntarily entered a plea of guilty. (*Id.* at 28). The Court
 accepted and entered Movant's guilty plea, but deferred acceptance of the
 written plea agreement. (*Id.*). The Court accepted the written plea agreement
 at the November 4, 2019 sentencing hearing. (CR Doc. 191 at 2). The Court
 sentenced Movant to 210 months in prison, followed by a five-year term of
 supervised release. (*Id.* at 26).

On May 8, 2020, Movant timely filed the § 2255 Motion (Doc. 1),
 which contains four grounds for relief. In its Screening Order, the Court

1 dismissed Grounds Two and Three and required the Government to respond
2 to Grounds One and Four. (Doc. 3 at 4).
3 (Doc. 10 at 1-3).

4 Movant's Ground One alleged that his trial counsel "would not file any suppression
5 motion at my request. Specifically the traffick [sic] stop, would not move for a hearing on
6 the issues I requested. I was misled to believe [sic] that I had a mandatory sentence of 20
7 years." (Doc. 1 at 5). After a thorough analysis, in which she correctly applied the
8 standards in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), Judge Willett found that
9 Ground One was without merit and that Movant had not shown "there was a colorable issue
10 that his counsel could have raised in a motion to suppress or other motion." (Doc. 10 at 7).

11 Movant's Ground Four alleged that his counsel was ineffective for allegedly failing
12 to notify him about the First Step Act of 2018, because that Act would have "changed the
13 plea." (Doc. 1 at 5). Judge Willett found that Ground Four was foreclosed by the plea
14 agreement's Waiver Provision, which manifested Movant's knowing, intelligent, and
15 voluntary waiver of his right to collaterally attack his conviction and sentence. She
16 specifically noted that "The enactment of the First Step Act after Movant's plea agreement
17 does not permit Movant to invalidate his knowing, intelligent, and voluntary waiver of
18 appellate/collateral attack rights." (Doc. 10 at 9).

19 **II. Objection**

20 Movant filed a three-page Objection to the R&R (Doc. 11). Therein, he states that
21 "The 2255 motion was timely and never ruled on" and conclusively asserts that he has
22 shown a violation of his right to effective assistance of counsel, and that there was "a breach
23 contract." (*Id.* at 1-2).

24 **III. Standard of Review**

25 This Court must "make a *de novo* determination of those portions of the report or
26 specified proposed findings or recommendations to which" Petitioner objects. 28 U.S.C.
27 § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3) ("The district judge must determine *de*
28 *novo* any part of the magistrate judge's disposition that has been properly objected to.");

1 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (same). In
 2 doing so, the Court “may accept, reject, or modify, in whole or in part, the findings or
 3 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ.
 4 P. 72(b)(3). At the same time, however, the relevant provision of the Federal Magistrates
 5 Act, 28 U.S.C. § 636(b)(1)(C), “does not on its face require any review at all. . . of any
 6 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1989);
 7 *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005) (“Of course, *de novo*
 8 review of a R&R is only required when an objection is made to the R&R”). Objections are
 9 to the R&R, and are not to “be construed as a second opportunity to present the arguments
 10 already considered by the Magistrate Judge.” *Betancourt v. Ace Ins. Co. of Puerto Rico*,
 11 313 F. Supp.2d 32, 34 (D.P.R. 2004). It is well-settled that “failure to object to a
 12 magistrate judge’s factual findings waives the right to challenge those findings[.]”
 13 *Bastidas v. Chappell*, 791 F.3d 1155, 1159 (9th Cir. 2015) (quoting *Miranda v. Anchondo*,
 14 684 F.3d 844, 848 (9th Cir. 2012) (internal quotation marks omitted) (footnote omitted)).

15 To enable district court review of an R&R, Rule 72(b)(2) also has a specificity
 16 requirement: namely, it requires parties make “*specific* written objections to the proposed
 17 findings and recommendations.” Fed. R. Civ. P. 72(2) (emphasis added). “[A]lthough the
 18 Ninth Circuit has not yet ruled on the matter, other circuits and district courts within the
 19 Ninth Circuit have held when a petitioner raises a general objection to an R&R, rather than
 20 specific objections, the Court is relieved of any obligation to review it.” *Martin v. Ryan*,
 21 2014 WL 5432133, at *2 (D. Ariz. 2014) (citing *See, e.g., Warling v. Ryan*, 2013 WL
 22 5276367, at *2 (D. Ariz. 2013) (“[A] general objection ‘has the same effect as would a
 23 failure to object.’”)); *Gutierrez v. Flannican*, 2006 WL 2816599 (D. Ariz. 2006) (citing
 24 *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984)). *See also McCulloch v. Tharratt*, 2017 WL
 25 6398611, at *1 (S.D. Cal. Dec. 15, 2017) (“[G]eneralized or blanket objections do not
 26 trigger the *de novo* requirement.”).

27 **IV. Analysis**

28 Petitioner has not triggered *de novo* review because, as is readily apparent, his

1 objections lack the requisite specificity. Petitioner’s objection that his timely “motion was
2 never ruled on” is simply incorrect, and his general contentions that he has shown “a
3 violation of [his] constitutional rights” and that “there was a breach of contract” does not
4 provide this Court for any meaningful basis for review. Petitioner does not articulate
5 which, if any, statements in the R&R he is referring to, or why he objects to these findings
6 and conclusions. Further, where, as here, Petitioner’s objections fail to identify a flaw in
7 the R&R’s analysis, they have the same effect as would a complete failure to object.
8 Indeed, if this Court were to undertake *de novo* review of Petitioner’s general objections,
9 it would defeat the “obvious purpose” of the specific objection requirement, which “is
10 judicial economy—to permit magistrate judges to hear and resolve matters not
11 objectionable to the parties.” *See Warling*, 2013 WL 5276367, at *2 (*citing Thomas*, 474
12 U.S. at 149; *Reyna–Tapia*, 328 F.3d at 1121). “Because *de novo* review of an entire R&R
13 would defeat the efficiencies intended by Congress, a general objection “has the same
14 effect as would a failure to object.” *See id.* (*citing Howard*, 932 F.2d at 509; *Haley v.*
15 *Stewart*, 2006 WL 1980649, at *2 (D. Ariz. 2006)). In light of the foregoing, the Court has
16 no obligation to review Petitioner’s general objections to the R&R. *See id.* at *2 (*citing*
17 *Thomas*, 474 U.S. 149).

18 Although the Court could simply accept the R&R based upon this case law, it did
19 not. The Court reviewed the R&R, the various exhibits referenced therein, and the
20 applicable law. After so doing, the Court is left with the firm conviction that Magistrate
21 Judge Willett’s recommendations are well taken and are supported by a correct application
22 of the law throughout. Accordingly,

23 **IT IS ORDERED** that Magistrate Judge Willett’s Report and Recommendation
24 (Doc. 10) is **ACCEPTED** and **ADOPTED** as the Order of this Court.

25 **IT IS FURTHER ORDERED** that the § 2255 Motion (Doc. 1) is **DENIED**.


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1 **IT IS FINALLY ORDERED** that the Clerk of the Court shall terminate this action
2 and enter judgment accordingly.

3 Dated this 17th day of May, 2021.

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6 Honorable Diane J. Humetewa
7 United States District Judge
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